

liability company that transacts business in Texas but is not registered with the Texas Secretary of State as required by TEX. BUS. ORG. CODE § 9.001. As such, Defendant Haute Health Limited Liability Company may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251(2)(B).

4. Defendant Carney & Carney Financial Services, LLC is a New Jersey limited liability company that transacts business in Texas but is not registered with the Texas Secretary of State as required by TEX. BUS. ORG. CODE § 9.001. As such, Defendant Haute Health Limited Liability Company may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251(2)(B).

5. Defendant Solid Rock Worship Center, Inc. is a New Jersey non-profit corporation that transacts business in Texas but is not registered with the Texas Secretary of State as required by TEX. BUS. ORG. CODE § 9.001. As such, Defendant Solid Rock Worship Center, Inc. may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251(2)(B).

6. Defendant Michael Heilig is an individual residing in West Berlin, New Jersey who may be served with process at 397 Franklin Avenue, West Berlin, New Jersey 08091 or wherever he may be found.

7. Defendant Michael Carney is an individual residing in Williamstown, New Jersey who may be served with process at 614 Atlanta Ct., Williamstown, New Jersey 08094-3549 or wherever he may be found.

8. Defendant Tyra Carney is an individual residing in Williamstown, New Jersey who may be served with process at 614 Atlanta Ct., Williamstown, New Jersey 08094-

3549 or wherever she may be found.

III. JURISDICTION & VENUE

9. The subject matter in controversy is within the jurisdictional limits of this Court.

10. Venue in Harris County, Texas is proper because all or a substantial part of the events giving rise to Plaintiff's claims occurred in Harris County, Texas. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1).

IV. FACTS

11. Defendant Haute Health Limited Liability Company produces and markets an herbal supplement called VirilisPro; Defendants Michael Heilig; Michael Carney; Tyra Carney; Solid Rock Worship Center, Inc. and Carney & Carney Financial Services, LLC have ownership interests in and/or operational control over Defendant Haute Health Limited Liability Company and/or participate in the distribution of VirilisPro.

12. VirilisPro is marketed as being "formulated to increase sexual performance, well being, endurance, stamina, and penile hardness all while intensifying overall sexual pleasure and satisfaction." It is also advertised "as made with only natural ingredients to prevent harmful side effects."

13. In the early morning hours of May 11, 2011, Plaintiff and his paramour were driving near the intersection of Highway 290 and West Little York when they stopped for gasoline at a Chevron station.

14. While paying, the store clerk told Plaintiff that he should consider purchasing VirilisPro and that it was all natural and safe.

15. Based on the store clerk's advice, Plaintiff purchased a package of Virilis Pro; he took one of the pills and continued on to the Scottish Inn with his paramour.

16. During sexual intercourse, Plaintiff experienced significant pain and observed a large quantity of blood squirting out of his penis onto the sheets, walls and mirror in the hotel room; his penis and scrotum were visibly swollen.

17. Plaintiff was transported from the Scottish Inn to a local emergency room by ambulance.

18. When he arrived at the emergency room, a doctor initially diagnosed Plaintiff with gross hematuria (or blood in the urine that can be seen with the naked eye), penile fracture, and urethral injury.

19. The doctor recommended penile exploration surgery; he advised Plaintiff that he may never regain erectile function and that he may have long-term damage to his urethra and problems urinating for the rest of his life.

20. After some initial exploratory surgery, the emergency room physician elected to deglove (or remove all of the skin from) Plaintiff's penis.

21. With the skeletonized penis exposed, the emergency room doctor was able to observe that Plaintiff's urethra had separated completely. The doctor repaired Plaintiff's urethra and other tissue damage resulting from the penile fracture, inserted a catheter, and closed the incision.

22. Plaintiff was released from the hospital a few days after his surgery, but the catheter was not removed for nearly three (3) weeks. Doctors again warned him that he may never have an erection or be able to father children and that his ureters may close

resulting in a permanent inability to urinate naturally.

23. Doctors advised Plaintiff not to even attempt sexual intercourse for at least one (1) month; they also advised him that he should not do any heavy lifting for at least six (6) months.

24. Prior to taking VirilisPro, Plaintiff's penis was fully functioning.

V. CONDITIONS PRECEDENT

25. All conditions precedent have been performed or have occurred.

VI. COUNT ONE: INDIVIDUAL LIABILITY/ALTER EGO

26. Plaintiff repeats the allegations contained in the paragraphs above and incorporates them by reference as if set forth at length.

27. Certain acts and/or omissions committed in the name of Defendants Haute Health Limited Liability Company; Carney & Carney Financial Services, LLC and Solid Rock Worship Center, Inc. were intentionally and knowingly performed by Defendants Michael Heilig; Michael Carney and Tyra Carney.

28. Defendants Michael Heilig; Michael Carney and Tyra Carney are, therefore, individually responsible for such acts.

29. Plaintiff suffered damages as a result of the intentional acts and/or omissions of Defendants Michael Heilig; Michael Carney and Tyra Carney.

VII. COUNT TWO: PRODUCTS LIABILITY

30. Plaintiff repeats the allegations contained in the paragraphs above and incorporates them by reference as if set forth at length.

31. Defendants were engaged in the business of introducing VirilisPro into the

stream of commerce.

32. VirilisPro was defective and unreasonably dangerous for use by consumers.

33. The defect existed at the time VirilisPro left Defendants' control.

34. Plaintiff was using VirilisPro in the manner intended for its use or in a reasonably foreseeable manner.

35. Plaintiff sustained injuries and suffered damages; VirilisPro was the producing cause of the injuries and damages sustained by Plaintiff.

36. Defendants are jointly and severally liable to the Plaintiff for the damages he sustained under the legal theory of strict liability. *See*, RESTATEMENT (SECOND) OF TORTS § 402A.

VIII. COUNT THREE: NEGLIGENCE

37. Plaintiff repeats the allegations contained in the paragraphs above and incorporates them by reference as if set forth at length.

38. Defendants are liable to Plaintiff because they were negligent and because their negligence was a proximate cause of the injuries and damages sustained by Plaintiff. Specifically, Defendants were negligent in one or more of the following respects:

- a. they placed VirilisPro on the market without warning the users that its everyday use could cause penile fractures, gross hematuria, or urethral injury;
- b. they failed to properly test or inspect VirilisPro and/or failed to warn of the dangers associated with the use of VirilisPro;
- c. they failed to remove VirilisPro from the market upon reasonable notice of the defect, the defect of the labeling, and the conditions it causes; and/or

d. such other acts and/or omissions that may be revealed in the course of discovery.

39. These acts and omissions, taken by themselves or in combination, were a proximate cause of Plaintiff's injuries and damages.

IX. COUNT FOUR: EXEMPLARY DAMAGES

40. Plaintiff is entitled to exemplary damages because Defendants acted with gross negligence and fraud in connection with VirilisPro. Specifically, Defendants knew that VirilisPro was extremely dangerous but advertised the product as safe for ordinary, daily use; they deliberately decided to omit any warnings that consumers take precautions when using VirilisPro thereby conveying the false impression that there was no risk at all in using VirilisPro.

X. COUNT FIVE: BREACH OF WARRANTY

41. Plaintiff repeats the allegations contained in the paragraphs above and incorporates them by reference as if set forth at length.

42. Defendants have breached express warranties and the implied warranty of merchantability under TEX. BUS. & COMM. CODE §§ 2.313-2.314 with respect to VirilisPro because it was not designed, manufactured, and marketed in such a way as to be fit for ordinary purposes for which such goods are used; VirilisPro would not pass without objection in the trade because of the discrepancies in the ingredients listed on the product itself as well as the website. Furthermore, VirilisPro did not conform to the promises or affirmations of fact made about it.

43. At the time Plaintiff used VirilisPro, Defendants expressly represented that

VirilisPro was “formulated to increase sexual performance, well being, endurance, stamina, and penile hardness all while intensifying overall sexual pleasure and satisfaction[.]” and that it was “made with only natural ingredients to prevent harmful side effects.”

44. Defendants breached their warranty with respect to VirilisPro because it did not “increase sexual performance, well being, endurance, stamina, and penile hardness all while intensifying overall sexual pleasure and satisfaction[.]” and it was not free from “harmful side effects.” In fact, the exact opposite is true: VirilisPro does not increase sexual well being because its use can result in penile fractures, gross hematuria, or urethral injury and the loss of sexual functioning altogether.

45. The express warranties described above were part of the basis of the bargain between Plaintiff and Defendants. VirilisPro was not of the quality or condition expressly warranted by Defendants’ affirmations and was defective in one or more of the following respects: (i) it did not “increase sexual performance, well being, endurance, stamina, and penile hardness all while intensifying overall sexual pleasure and satisfaction[;]” (ii) Defendants did not disclose all of the ingredients used in making VirilisPro; and (iii) Defendants did not warn consumers that using VirilisPro could result in penile fractures, gross hematuria, or urethral injury and the loss of sexual functioning altogether. VirilisPro is inherently dangerous to all who use it and cannot be used in the manner intended without serious risk of physical injury to the consumer.

46. Defendants’ breach of the foregoing warranties was a proximate cause of the injuries and damages incurred by Plaintiff.

XI. COUNT SIX: VIOLATION OF THE DTPA

47. Plaintiff repeats the allegations contained in the paragraphs above and incorporates them by reference as if set forth at length.

48. Plaintiff was a “consumer” as that term is defined in TEX. BUS. & COMM. CODE ch. 17 (“DTPA”).

49. Plaintiff acquired VirilisPro by purchasing it in May 2011.

50. Defendants manufactured and/or distributed VirilisPro and were, therefore, involved in Plaintiff’s acquisition of VirilisPro. As such, they be held liable under the DTPA.

51. Defendants violated TEX. BUS. & COMM. CODE §§ 17.46(b), 17.50 by the following acts and/or omissions:

- a. Defendants committed a false misleading, or deceptive act or practice that Plaintiff relied on to his detriment. Specifically, on their website and the VirilisPro’s labeling, Defendants represented that their goods had characteristics, ingredients, uses, and benefits that they did not have. They also represented that VirilisPro was safe to use and failed to warn consumers of the possible side effects of using it, penile fractures, gross hematuria, or urethral injury and the loss of sexual functioning altogether.
- b. Defendants engaged in unconscionable action or course of action by encouraging consumers to take VirilisPro without warning of any of the possible side effects. In fact, Defendants marketed VirilisPro as “all natural” and “safe” even though it was not. Based on these representations, Plaintiff took VirilisPro as directed and suffered injuries and damages.

Defendants still encourage consumers to take VirilisPro without warning of the possible side effects. In fact, the VirilisPro website (www.virilispro.com) still advertises that VirilisPro is “all natural” and “safe.” Neither the website nor the labeling on Virilis Pro bottles disclose the risks associated with taking it. By their conduct, Defendants took advantage of the lack of knowledge, ability, experience of Plaintiff

to his detriment to a grossly unfair degree.

- c. Defendants breached both express warranties and the implied warranty of merchantability as described above.
- d. Defendants' actions were a producing cause of Plaintiff's damages. Defendants expressly represented that VirilisPro had characteristics which it does not have. They also assured consumers of Virilis Pro, including Plaintiff, that it was safe and completely failed to warn of any negative side effects. Plaintiff relied on Defendants' representations to his detriment and he suffered injuries (i.e., penile fractures, gross hematuria, and damage to his urethra) and incurred damages.

XII. JURY REQUEST

52. Plaintiff requests a trial by jury and tenders the appropriate fee.

XIII. REQUESTS FOR DISCLOSURE

53. Pursuant to TEX. R. CIV. P. 194, you are requested to disclose, within fifty (50) days of service of this request, the information or material described in TEX. R. CIV. P. 194.2.

XIV. PRAYER

WHEREFORE PREMISES CONSIDERED, Plaintiff asks that Defendants be cited to appear and answer and that on final hearing Plaintiff have:

- a. actual damages;
- b. past and future medical expenses;
- c. past and future mental anguish;
- d. past and future physical pain and suffering;
- e. past and future physical impairment;
- f. past and future disfigurement;

- g. past and future loss of consortium;
- h. exemplary damages;
- i. costs of court;
- j. reasonable attorneys' fees;
- k. prejudgment interest as provided by law;
- l. postjudgment interest as provided by law; and
- m. such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

MOORE & ASSOCIATES

By: 

Melissa Moore

State Bar No. 24013189

Curt Hesse

State Bar No. 24065414

Lyric Centre

440 Louisiana, Suite 675

Houston, Texas 77002

Tel: (713) 222-6775

Fax: (713) 222-6739

ATTORNEYS FOR PLAINTIFF